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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION

13 UNITED STATES OF AMERICA,)	No. CR 07-00370 CW
)	
14 Plaintiff,)	UNITED STATES' SENTENCING
)	MEMORANDUM FOR DEFENDANT
15 v.)	JOSE CLEMENTE LOPEZ-PADILLA
)	
16 JOSE CLEMENTE LOPEZ-PADILLA,)	Hearing Date: December 5, 2007
)	Hearing Time: 2:00 p.m.
17 Defendant.)	
)	

18
19 **I. INTRODUCTION**

20 On September 19, 2007, defendant Jose Clemente Lopez-Padilla pled guilty to sole count in
21 the Information, illegal reentry by an alien after deportation in violation of 8 U.S.C. § 1326. The
22 United States agrees with the United States Probation Office's ("USPO") guidelines calculation
23 from the November 13, 2007 final presentence report ("PSR") for the defendant in the above-
24 captioned case. In light of the defendant's criminal history, the United States also agrees with the
25 defendant that a prison sentence of 18 months is appropriate in these circumstances pursuant to
26 18 U.S.C. § 3553(a). The United States withdraws any unresolved objections to the PSR.

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II. ARGUMENT

A. The USPO's Guidelines Calculation Is Correct.

The United States agrees with the USPO that the Total Offense Level is 13. PSR ¶ 25. The USPO properly applies a 12-level enhancement under U.S.S.G. § 2L1.2(b)(1)(B) because the defendant has a prior felony conviction for a drug trafficking offense for which the sentence imposed was 13 months or less. PSR ¶ 15. On May 16, 1997, the defendant pled *nolo contendere* to a violation of California Health and Safety § 11358, Unauthorized cultivation, harvesting or processing of marijuana. *Id.* at ¶ 29; *see also* Certificate of Magistrate and Commitment (Guilty Plea to Felony) attached as Exhibit A to this Memorandum. According to the Newark Police report, the officers discovered a marijuana plant growing in a pot on the night stand in the defendant's bedroom next to his bed. *See* Newark Police Department Incident Report at p.2, attached as Exhibit B to this Memorandum; PSR at ¶ 29. Growing marijuana, even only one plant for alleged personal use, satisfies the guidelines definition of a "drug trafficking offense" that "prohibits the manufacture . . . of a controlled substance" under U.S.S.G. § 2L1.2(b)(1)(B).

The United State agrees with the USPO computation that the defendant's criminal history points total is eight, establishing a Criminal History Category of IV. PSR ¶ 39. The United States withdraws any unresolved objections to the PSR.

B. The Defendant's Criminal History May Be Overstated.

The United States agrees with the defendant that a sentence of 18 months imprisonment is appropriate in these circumstances. As noted by the USPO, the defendant received a twelve-level enhancement for felony drug trafficking that consisted of growing one marijuana plant approximately ten years ago, and has had no subsequent arrests or convictions for drug trafficking offenses. PSR ¶ 74. The defendant has no history of violence. *Id.* In light of the defendant's criminal history, the United States agrees that a sentence of 18 months is appropriate in these circumstances pursuant to this Court's consideration of appropriate sentencing factors under 18 U.S.C. § 3553(a).

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1 **III. CONCLUSION**

2 For the foregoing reasons, the United States respectfully requests this Court to sentence
3 the defendant to 18-months imprisonment, impose a three-year term of supervised release, and
4 order the defendant to pay a \$100 special assessment.

5
6 Respectfully submitted,

7 SCOTT N. SCHOOLS
8 United States Attorney

9 DATED: November 29, 2007

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11 DANIEL R. KALEBA
12 Assistant United States Attorney
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Exhibit A

212-205

(Spanish)

MUNICIPAL COURT FOR THE FREMONT-NEWARK-UNION CITY JUDICIAL DISTRICT
COUNTY OF ALAMEDA, STATE OF CALIFORNIA
ALAMEDA COUNTY

THE PEOPLE OF THE STATE OF CALIFORNIA

No. 174224 H-23331

vs.

CERTIFICATE OF MAGISTRATE

RONALD G. OVERMONT, Esq. (Judge)

(Guilty Plea to Felony)

Lopez, Jose Padilla

Defendant(s)

PFN-AVJ550
CEN-7150496

The attached complaint was filed in the above entitled court and a copy thereof delivered to the below named defendant(s), and to each of them if more than one.

On 5-16-97, while the charges in the complaint were pending in the court,
defendant Jose Padilla Lopez with his
counsel P.D. Phil Goldsmith

appeared before me in open court. I then read the complaint to the defendant(s) and asked the defendant(s) whether he pleaded guilty or not guilty to the offense(s) charged and to previous conviction(s) of crime if charged.

With my consent and the consent of the District Attorney, with counsel for defendant(s) present, the defendant(s) pleaded guilty to the felony offense(s) to wit: no contest to a violation of section 11358 of the Health & Safety Code of Ca. as charged in Ct. 1 of the complaint. FG-F11358 HS

I therefore certify this case to the Superior Court of the State of California, in and for the County of Alameda and refer the matter to the Probation Office for Report and Sentence in said Superior Court on 6-30-97 8:31am Dept. 7

Defendant(s), and each of them if more than one, may be admitted to bail (including penalty assessment) in the sum of \$ ~~5,000.00~~ OR'D

The Sheriff of the County of Alameda, if the defendant(s) is not now on bail, is commanded to receive the defendant(s) into custody and to detain defendant(s) until legally discharged.

Dated 5-16-97

D. B. Squires

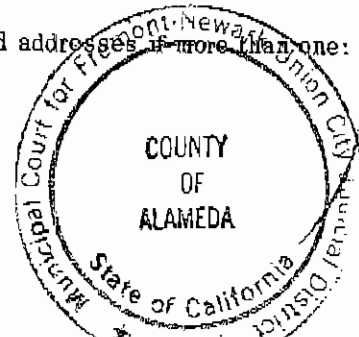
Judge of the Municipal Court

Copy issued to the Sheriff of County of Alameda as commitment for said defendant(s).

Defendant(s) on OR bail posted by

For defendant(s) on bail, give address if one defendant; names and addresses if more than one:

Address - 37122 Elm St
NEWARK #15
Phone 793 86 96



FILED

MAY 9 1997

George S Hagan, Clerk of the
Municipal Court for the Fremont
Newark Union City Judicial District.
Deputy

MUNICIPAL COURT FOR THE FREMONT-NEWARK-UNION CITY JUDICIAL DISTRICT
COUNTY OF ALAMEDA, STATE OF CALIFORNIA

H-23931

THE PEOPLE OF THE STATE OF CALIFORNIA

vs.

JOSE PADILLA LOPEZ

DEFENDANT(s)

No. 174224-4 RPT: 97-3899

COMPLAINT TA: IN CUSTODY

PFN: AYJ550 CEN: 7150496

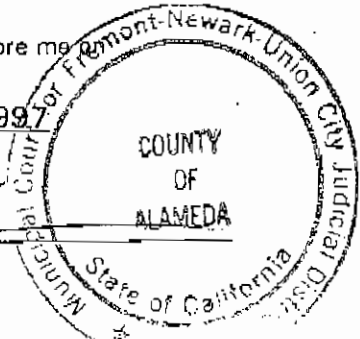
The Undersigned, being sworn, says, on information and belief, that said defendant(s) did, in the Fremont-Newark-Union City Judicial District, County of Alameda, State of California, on or about MAY 9, 1997, commit a FELONY, to wit: a violation of Section 11358 of the Health and Safety Code of California, in that said defendant(s) did then and there plant, cultivate, harvest, dry and process marijuana.

Complainant therefore prays that a warrant issue and that the said defendant(s) be dealt with according to law.

Subscribed and sworn to before me

May 9, 1997 TL:lg 51997

Deputy District Attorney,
Alameda County, California



Name

Address

Telephone

[Signature]
/S/ NPD

The foregoing instrument is a correct copy of the original on file in this office.	
ATTEST: MAY 16 1997	
George S Hagan, Clerk of the Municipal Court for the Fremont-Newark-Union City Judicial District, County of Alameda, State of California	
By <i>[Signature]</i>	Deputy

Exhibit B

NEWARK POLICE DEPARTMENT INCIDENT REPORT

PAGE 1 of 4 PAGES

REPORTING OFFICER N. ALI	NO. 17	SECTOR 2	DATE/TIME REPORTED 5-1-07 0159HRS	MM 5	DD 9	YR 97	DAY OF WEEK FRIDAY	TIME 0159H
OFFENSE 11358 H/S			REF CODE DRUGS	OCCURRED ON OR BETWEEN				

CLASSIFICATION CULTIVATION OF MARIJUANA			EVIDENCE OBTAINED <input type="checkbox"/> FINGERPRINTS <input type="checkbox"/> WEAPON TOOL <input type="checkbox"/> PHOTOS <input type="checkbox"/> STAINS <input type="checkbox"/> SEMEN <input type="checkbox"/> OTHER PRINTS <input type="checkbox"/> VEHICLE <input type="checkbox"/> HAIR <input type="checkbox"/> BLOOD <input type="checkbox"/> OTHER					
LOCATION 37122 #15 Elm St			NO. OF VICTIMS: 0 NO. OF SUSPECTS: 1					
SHIFT 1	DIV. 1	PROPERTY AMT. 1	VEHICLE AMT. 1	DAMAGE AMT. 1				

RELATED CASES			CAN VICTIM ID: PROPERTY <input type="checkbox"/> YES <input type="checkbox"/> NO: SUSPECTS <input type="checkbox"/> YES <input type="checkbox"/> NO					
---------------	--	--	---	--	--	--	--	--

S	1	NAME LOPEZ, JOSE CLEMENTE Padua	REL(M)	SCHOOL/BUSINESS ADDRESS	PHONE
ARREST	RACE A	HT 5'6"	WT 150	HAIR BLK	EYES BEN
JUV	SEX M	DOB 01-11-73	RD 2130	ADDRESS 37122 #15 Elm St, Newark	PHONE 793-8696

S	2	NAME	REL(M)	SCHOOL/BUSINESS ADDRESS	PHONE
ARREST	RACE	HT	WT	HAIR	EYES
JUV	SEX	DOB	RD	ADDRESS	PHONE

S	3	NAME	REL(M)	SCHOOL/BUSINESS ADDRESS	PHONE
ARREST	RACE	HT	WT	HAIR	EYES
JUV	SEX	DOB	RD	ADDRESS	PHONE

CODE	NAME LOPEZ, REFUGIO PADULLA	SCHOOL/BUSINESS ADDRESS	PHONE
4	RACE H	HT M	WT 150
CODE	NAME	SCHOOL/BUSINESS ADDRESS	PHONE

5	RACE	SEX	HT	WT	HAIR	EYES	DOB	ADDRESS	PHONE
CODE	NAME	SCHOOL/BUSINESS ADDRESS						PHONE	

6	RACE	SEX	HT	WT	HAIR	EYES	DOB	ADDRESS	PHONE
CODE	NAME	SCHOOL/BUSINESS ADDRESS						PHONE	

7	RACE	SEX	HT	WT	HAIR	EYES	DOB	ADDRESS	PHONE
CODE	NAME	SCHOOL/BUSINESS ADDRESS						PHONE	

8	RACE	SEX	HT	WT	HAIR	EYES	DOB	ADDRESS	PHONE
CODE	NAME	SCHOOL/BUSINESS ADDRESS						PHONE	

BODY STYLE		MAKE	MODEL	YR	LICENSE NO	STATE	COLORS
DAMAGE/LOCATION				OTHER DESCRIPTION			
LAST SEEN							
JUV/ADULT	LAST SEEN			TIME	DESTINATION		

CAUSE OF ABSENCE				PHYSICAL OR MENTAL DISORDER <input type="checkbox"/> YES <input type="checkbox"/> NO				SAFETY ENDANGERED <input type="checkbox"/> YES <input type="checkbox"/> NO			
DIA NOTIFIED				PRIOR	FT	DATE	NO	ADDRESSEE			

CITIZEN ARREST / CITE RELEASE											
42 I HEREBY ARREST THE ABOVE DEFENDANT ON THE CHARGE INDICATED AND REQUEST A PEACE OFFICER TO TAKE HIM INTO CUSTODY. I WILL APPEAR AS DIRECTED AND SIGN A COMPLAINT AGAINST THE PERSON I HAVE ARRESTED.											
NAME				DOB				SIGNED:			
ADDRESS HOME				PHONE				BUSINESS: PHONE:			

CITATION NO.				COURT DATE/TIME:			
JUV ARRESTS	ADVISED OF RIGHTS <input type="checkbox"/> YES <input type="checkbox"/> NO	TELEPHONE CALLS GIVEN <input type="checkbox"/> YES <input type="checkbox"/> NO	PARENTS NOTIFIED <input type="checkbox"/> YES <input type="checkbox"/> NO	TIME:			
CODE	REL(M)	DISPOSITIONS	STATUS	DEPT. DISPO.	COR LT		
V VICTIM	A STRANGER	G EMPLOYER	10	5	CM • CA • ENG • C/CLK • X. ACC. • AA		
S SUSPECT	B PARENT/CHILD	H EMPLOYEE	OTHER				
I INFORMANT	C SPOUSE	I CUSTOMER	TOTAL				
W WITNESS	D OTHER RELATIVE	J OTHER	5				

CASE NO. 97-3899
CODES: (V) VICTIM (S) SUSPECT (I) INFORMANT (W) WITNESS
ARREST: (A) ARREST (CA) CITIZEN ARREST (C) CITATION (D) DETENTION ONLY (N) NO ARREST
NPD FORM REV 10/04

NEWARK POLICE PROPERTY/NARRATIVE

CASE NO.		DATE		OFFICER		NO.		PAGE	
97-3899		5-9-97		MURPHY		17		2 of 4	
CODE	UCR TYPE	ITEM NO.	ARTICLE NAME	BRAND/MAKE MANUFACTURER	MODEL NAME OR NUMBER	MISC DESCRIPTION	IDENTIFICATION NUMBER	QTY	VALUE
E		1	APPROX. 12" MARIJUANA PLANT					1	-
E		2	THREE PHOTOGRAPHS OF MARIJUANA PLANT					3	-
E		3	AUDIO TAPE OF CONTACT					1	-
<p>SCENES ON 5-9-97 AT 0159 HAS OFFICER LUBIANO AND I RESPONDED TO 37122 ELM ST #15 IN ORDER TO CONTACT JOSE CLEMENTE LOPEZ. I RECEIVED INFORMATION THAT LOPEZ WAS SELLING METHAMPHETAMINE AND MARIJUANA FROM HIS HOUSE. WE COULD SEE THAT LIGHTS WERE ON INSIDE THE RESIDENCE. PRIOR TO CONTACTING LOPEZ I ACTIVATED MY AUDIO TAPE RECORDER. OFFICER LUBIANO AND I KNOCKED ON THE DOOR AND LOPEZ' ROOMMATE, REFUGIO LOPEZ, ANSWERED THE DOOR. WE TOLD REFUGIO WE NEEDED TO TALK WITH CLEMENTE LOPEZ. WE ASKED REFUGIO IF WE COULD COME INSIDE TO TALK WITH LOPEZ. REFUGIO SAID "OK" AND MOVED AWAY FROM THE DOOR.</p> <p>INVESTIGATION: REFUGIO WALKED ME INTO LOPEZ' BEDROOM AND HE WOKED LOPEZ UP. I SAW A SUSPECTED MARIJUANA PLANT GROWING IN A POT ON THE NIGHTSTAND NEAR LOPEZ' BED.</p>									
CODE		UCR TYPE							
S-STOLEN		A-MONEY, NOTES				G-FIREARMS			
R-RECOVERED		B-JEWELRY, PRECIOUS METALS				H-HOUSEHOLD GOODS			
L-LOST		C-CLOTHING				I-CONSUMMABLE GOODS			
F-FOUND		E-OFFICE EQUIPMENT				J-LIVESTOCK			
E-EVIDENCE		F-TV, RADIOS, STEREOS, ETC.				K-MISCELLANEOUS			
D-DAMAGE ONLY									

**NEWARK POLICE
PROPERTY/NARRATIVE**

CASE NO 97-3899		DATE 5-9-97	OFFENSE 11358 H/S	OFFICER NIANOFF	NO 112	PAGE 3 OF 4		PAG	
CODE	UCR TYPE	ITEM NO	ARTICLE NAME	BRAND/MAKE MANUFACTURER	MODEL NAME OR NUMBER	MISC DESCRIPTION	IDENTIFICATION NUMBER	QTY	VALUE
			<p>LOPERZ CAME INTO THE FAMILY ROOM. I TOLD LOPERZ THAT PEOPLE HAVE BEEN SAYING THAT HE IS SELLING "CRACK" AND MARIJUANA. LOPERZ SAID HE DOES NOT SELL ANY DRUGS TO ANYONE. I ASKED LOPERZ IF HE WOULD MIND IF I LOOKED AROUND FOR ANY DRUGS. LOPERZ SAID "SURE, SURE" AND MOTIONED WITH HIS HANDS FOR US TO LOOK AROUND. WE ASKED LOPERZ IF THERE WERE ANY OTHER MARIJUANA PLANTS IN THE HOUSE BESIDES THE ONE IN HIS BEDROOM. LOPERZ SAID "NO". WE SEARCHED THE HOUSE FOR MARIJUANA AND ANY ADDITIONAL MARIJUANA, BUT WE DID NOT FIND ANY. LOPERZ SAID HE SMOKES MARIJUANA "A LOT." WE ASKED LOPERZ IF HE HAD ANY MEDICAL CONDITIONS. LOPERZ SAID HE HAD NO MEDICAL PROBLEMS. LOPERZ SAID HE JUST "NEEDS TO GET HIGH." LOPERZ SAID THE MARIJUANA WAS HIS AND IT WAS ONLY FOR PERSONAL USE. LOPERZ SAID HE WAS NOT SELLING THE MARIJUANA. I PLACED LOPERZ UNDER ARREST FOR 11358 H/S, CULTIVATION OF MARIJUANA.</p>						
<p><u>STATEMENTS: AS RELATED ABOVE.</u></p>									
CODE		UCR TYPE		DISPOSITIONS		COP • LT _____ • SGTS • DET • PCC			
S-STOLEN R-RECOVERED L-LOST F-FOUND E-EVIDENCE D-DAMAGE ONLY		A-MONEY, NOTES B-JEWELRY, PRECIOUS METALS C-CLOTHING E-OFFICE EQUIPMENT F-TV, RADIOS, STEREOS, ETC.		G-FIREARMS H-HOUSEHOLD GOODS I-CONSUMMABLE GOODS J-LIVESTOCK K-MISCELLANEOUS		STATUS: _____ DEPT. (USPD) _____ FBI: _____ JUV: _____		DA • FU • CI • JP • CHP • SRV CTR CM • CA • ENG • C/CLK • X. ACC. • AA	

NEWARK POLICE PROPERTY/NARRATIVE

CASE NO. 97-3899		DATE 5-9-97		OFFENSE 11358 H/S		OFFICER Nunzio		NO.		PAGE 4 OF 4	
CODE	UCR TYPE	ITEM NO	ARTICLE NAME	BRAND/MAKE MANUFACTURER	MODEL NAME OR NUMBER	MISC DESCRIPTION	IDENTIFICATION NUMBER	QTY	VALUE		
			<p>EVIDENCE I VALTAX TESTED THE SUSPECTED MARIJUANA, WHICH TURNED OUT TO BE POSITIVE FOR MARIJUANA. I TOOK THREE PHOTOGRAPHS OF THE MARIJUANA PLANT. I BOOKED THE MARIJUANA PLANT, THE PHOTOGRAPHS, AND AUDIO TAPE INTO EVIDENCE.</p>								
			<p><u>DISPOSITION:</u> LOPEZ HAS BEEN ARRESTED IN THE PAST FOR DRUG VIOLATIONS. LOPEZ IS ON COURT PROBATION FOR (4744) P.C. I TRANSFERRED AND BOOKED LOPEZ AT FREMONT JAIL FOR 11358 H/S, CULTIVATION OF MARIJUANA.</p>								
			<p style="text-align: right;">S-9-97-0632428</p>								
CODE		UCR TYPE		DISPOSITIONS		COP • LT • SGTs • DET • PCO					
S-STOLEN		A-MONEY, NOTES		STATUS		DA • FU • CI • JP • CHP • SRV CTR					
R-RECOVERED		B-JEWELRY, PRECIOUS METALS		DEPT. DISPL.		CM • CA • ENG • C/CLK • X. ACC. • AA					
L-LOST		C-CLOTHING		FBI							
F-FOUND		E-OFFICE EQUIPMENT		JUV.							
E-EVIDENCE		F-TV, RADIOS, STEREOs, ETC.									
D-DAMAGE ONLY		G-FIREARMS									
		H-HOUSEHOLD GOODS									
		I-CONSUMMABLE GOODS									
		J-LIVESTOCK									
		K-MISCELLANEOUS									

ALAMEDA COUNTY CONSOLIDATED AREA										NEW POLICE DEPARTMENT 001									
DEFENDANT'S NAME FIRST MIDDLE LAST										DEFENDANT'S DOB									
OTHER NAMES										REPORT/ARREST NUMBER									
DATE OF BIRTH										DOB									
HAIR										EYES									
BUILD										WEIGHT									
SKIN										GLASS									
SALIENT CHARACTERISTICS (SMT'S)																			
HOME ADDRESS										CITY									
HOME PHONE										BUS PHONE									
EMPLOYER'S ADDRESS										CITY									
ARREST DATE										ARREST TIME									
NON REL										CHECKS PIN									
CODE SECTION (USE SUB SECTION)										CIVIL									
ARMED WITH DEADLY WEAPON										GREAT BODILY INJURY									
LOCATION OF ARREST										CITY									
ARRESTING OFFICER										ASSISTING OFFICER									
VEH. LICENSE #										STATE									
I HEREBY ARREST THE ABOVE DEFENDANT ON THE CHARGE INDICATED AND REQUEST A PEACE OFFICER TO TAKE HIM INTO CUSTODY																			
NAME										DOB									
ADDRESS HOME										PHONE									
COMPLAINANT'S NAME										SEX/RACE/AGE									
PERSON TO BE NOTIFIED										JUV									
ADDRESS OF PERSON TO BE NOTIFIED										BUS PHONE									
RELEASE INFORMATION										JUVENILE DISPOSITION									
PRISONER SIGNATURE/OUTGOING										OFFICER SIGNATURE/OUTGOING									
NARRATIVE																			
BCS CODING										CITE									
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